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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

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In the Matter of)
)
Policies and Rules Concerning) Mm Docket No. 93-48
Children's Television Programming)
)
Revision of Programming Policies)
for Television Broadcast Stations)

TO: The Commission

SUPPLEMENTAL COMMENTS OF ACT III BROADCASTING, INC.

Act III Broadcasting, Inc.,¹ by its attorneys, hereby submits Supplemental Comments in connection with the above-referenced proceeding. Act III had sought to appear at the En Banc Hearing, through one of its General Managers, to make an oral presentation and debate issues relating to the proceeding but, unfortunately, Act III's request could not be accommodated in view of the number of such requests. Therefore, Act III is submitting these Supplemental Comments to address certain areas of concern.

^{1/} Act III is the parent of Act III Broadcasting of Nevada, Inc., which in turn owns 100% of Act III Broadcasting Corp., licensee of the following stations: WRGT-TV, Dayton, Ohio; WTAT-TV, Charleston, South Carolina; WUHF-TV, Rochester, New York; WZTV(TV), Nashville, Tennessee; WNRW(TV), Winston-Salem, North Carolina; WRLH-TV, Richmond, Virginia; WVAH-TV, Charleston, West Virginia; and WUTV(TV), Buffalo, New York. All of the Act III stations, with the exception of WVAH-TV, Channel 11, Charleston, West Virginia, are UHF stations, and all are affiliated with the Fox television network.

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1. The Public Notice announcing the En Banc Hearing requests comments on changes in the availability, quantity, quality and effectiveness of programming directed to the educational and informational needs of children, including standard-length programming, that have occurred between the enactment of the Children's Television Act of 1990 and the present. In addition, the Commission indicates its interest in comments on the economics of providing educational and informational programming for children either to the home or to the classroom. These Supplemental Comments address these and other issues posed by the Commission's Notice of Inquiry ("NOI"), 8 FCC Rcd 1841 (1993).

I. The Commission Should Defer To the Good Faith Discretion of Licensees Concerning The Quantity, Quality and Effectiveness of Programming Directed To The Educational and Informational Needs of Children

A. The NOI's Preference for Long Form Programming Is Misplaced

2. It has been Act III's experience that the only long form educational programs that consistently do well in the ratings are those directed at the pre-school aged children. The older-skewing instructional programs never do as well in reaching their intended audiences as programs that are more entertainment oriented. Therefore, in order to reach the 6-11 and 12-16 age groups, it is necessary to program entertainment-type programs in which an educational message is intertwined. Unfortunately, the Commission appears to be dismissing the value of short form programming without any full-fledged analysis of the issue.

3. Act III believes that some standard-length programming for children should be aired; however, Act III has found that short-form programming is particularly effective at reaching the child audience. The Networks and many of our stations spend a great deal of time producing informational and educational vignettes (e.g., Fox Television's Totally for Kids segments and the Kids Stuff segments produced by Act III Station WZTV(TV), Nashville, Tennessee). When segments such as these are placed within the programs that children watch for entertainment, they present an excellent opportunity to educate and inform. For instance, a 30-second vignette placed inside Power Rangers will have many more exposures than the entire 30 minutes of Real News for Kids.

4. The Act III station in Richmond, Virginia, WRLH(TV) reaches a cumulative audience of approximately 63% of all children in the market each week. The majority of children in the market will be exposed to short segment programming if the segments are aired throughout children's programming. In contrast, even a successful informational/educational 30 minute program is lucky to achieve a reach of only 3-5%. The Act III stations have found that short form programming has been effective in teaching topics such as:

- Conflict resolution
- Different cultures
- Different religions
- Attitude toward the handicapped
- Tolerance for one another
- Anti-Drugs
- Anti-violence
- Improving self esteem
- Identifying hometown heroes
- Adult role models

Peer role models

In sum, the Act III stations believe that short form programming is effective as well as more readily available and should play a significant role in meeting the Act's requirements.

B. **Any FCC Processing Guidelines Should Be Applied To the Week As a Whole**

5. The NOI raises the possibility of adopting staff processing guidelines which would specify an amount and type of children's programming that would permit staff grant of a license renewal application. Among the suggested guidelines are one hour per week or one hour during the week and one hour during the weekend of standard-length informational and educational programming.

6. Act III submits that if any guidelines in this area are adopted, they should be applied to the week as a whole rather than to weekdays and weekends separately. Many children's programs air Monday through Friday and some licensees may prefer to meet their responsibilities through regular weekday programming. On the other hand, some licensees may prefer to air weekend specials or community events which would meet their responsibilities. Providing flexibility in this area will enable broadcasters to carry a variety of programming at an array of times and lengths that will be more beneficial to broadcasters as well as to the local children of their communities.

II. **The FCC Needs To Understand The Economics and Practicality of Producing Programming for Children**

7. The economics of the television business make the production of quality long form programs extremely difficult to sustain in mid-sized and small markets. While Act III stations are working at producing such programming, the Commission must recognize that such productions are extremely expensive and time consuming to produce. They also strain staff resources.

8. As noted earlier, all but one of the Act III stations are UHF facilities. While the stations compete in each market with VHF stations affiliated with the major networks, the Act III stations have less manpower and less revenue to invest in locally produced children's programming. Producing a children's program is particularly time intensive because a great deal of creative talent and planning must be invested to produce a program that will sustain a child's interest. The Act III station in Rochester, New York, produces a weekly half hour educational program for pre-school children, The Adventures of Gary, The Happy Pirate. The show features topics that inform youngsters on issues such as recycling, nutrition and self-esteem while providing a "fun" environment of sing-along music designed especially for children. However, WUHF(TV) has found that long form programming makes it very easy for the child to literally "tune out," while well executed short form programming can hold a child's interest.

9. A great deal of children's programming that is available to local stations is produced by syndicators and

financed through barter arrangements. The commercial time in a half hour program (e.g., 5-1/2 minutes) is divided between the syndicator and the local station with the syndicator selling the commercial time it retains at the national level. National advertisers are guaranteed that they will reach a certain percentage of the audience when they purchase a spot in a syndicated program. If that percentage is not reached, the advertiser may not have to pay for the spot or may pay at a reduced rate. If ratings are not delivered, the syndicator may end up cancelling the program. The failure rate of all television programs is very high, and children's programming is even more susceptible to failure because of the vagaries of the child audience. Thus, despite the best efforts of licensees to obtain children's programming, there is no assurance that a given program will last beyond one season.

**III. The Commission Should Utilize A Holistic Approach
In Assessing A Licensee's Compliance With The
Children's Television Act**

10. Instead of focusing solely on the amounts of children's programming aired on a given station, Act III believes that the Commission should examine a licensee's overall efforts to comply with the Children's Television Act. For instance, the following areas of examination would be relevant.

Is the station doing any long form programming?

Is the station doing any short form programming?

Is the station doing any local production?

Is the station engaging in community involvement?

Are there tie-ins between the station and local schools?

What kind of children's programming is being provided in the market (including programming aired by the local PBS station and the cable networks)?

Does the station have a specific educational and/or informational mission?

Does the station have a local host or hostess serving as a role model for children?

Is the station completing its required Children's Programming Reports?

Many of the activities in which television stations participate result in benefits to children. For instance, a station's sponsorship of a "Health Fair" or "Safety Fair" can enable children to learn from hands-on experience. At present, the Commission does not credit non-broadcast efforts unless they are tied to programming. Act III submits that non-broadcast activities which benefit children should not be so severely restricted. Promotional announcements about such activities or events should be adequate to tie the activity to programming.

IV. The FCC Should Clarify The Application of Commercial Limits to "Children's Programming"

11. In its original Comments in this proceeding, filed May 7, 1993, Act III sought guidance concerning the application of the commercial limits to children's programming. This is an area that is still fraught with peril and there has been little clarification from the Commission. Act III is concerned that

despite the extensive measures that it has taken and even with several safeguards in place, it is still possible for accidents to occur. At a number of Act III's stations, a minimum of eight people directly schedule items on the final log each day, beginning with the traffic manager and ending with the master control operator who actually puts the items on-air. Possible errors can include such problems as the following:

When an existing number is assigned to a spot, the old spot is supposed to be deleted. However, it is a person deleting the old spots. A deletion could be missed which would result in two spots with the same number.

The new spot could be for Rice Krispies; the old spot could be for Mighty Morphin Power Ranger toys. The new spot could be scheduled in the MMPR program, but the automated system could select the older MMPR spot, not see anything wrong and air the MMPR spot within the MMPR program.

This error would change MMPR into a program-length commercial wholly unintentionally. In fact, the effort would even cost the station advertising dollars because the right spot did not air.

12. Obviously, there is every incentive to avoid the errors described. Yet errors can happen. The forfeitures now imposed by the Commission are draconian. Errors such as that described are routinely labeled as "willful" even though they occur quite innocently. It is particularly difficult for smaller market broadcasters to monitor the commercial limits in children's programming to guard against all such errors. The Act III stations devote substantial staff time to monitoring children's programming yet they have discovered that despite the best of

procedures, errors can occur. The imposition of substantial forfeitures only serves to deplete the resources that would otherwise be available to improve programming. Moreover, the Commission is unfairly punishing those who candidly come forward and admit their errors. Accordingly, the Commission should give consideration to approaching forfeitures in a more compassionate manner.

Respectfully submitted,

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Dated: June 15, 1994

2000-94:2500-000.K03

CERTIFICATE OF SERVICE

I, Jackie Haskins, a secretary of the law firm, Fisher Wayland Cooper Leader & Zaragoza L.L.P. hereby certify that I have, this 15th day of June, 1994, caused to be sent by United States first class mail, postage prepaid, a true and correct copy of the foregoing "**SUPPLEMENTAL COMMENTS OF ACT III BROADCASTING, INC.**" to the following:

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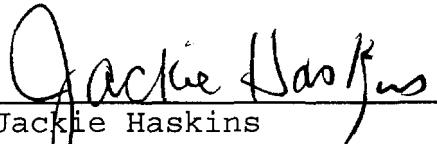
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